
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

THEODORE L. HANSEN, et al.,

Plaintiffs,

v.

**NATIVE AMERICAN REFINERY
COMPANY, et al.,**

Defendants.

ORDER

Case No. 2:06-cv-00109-PGC-PMW

District Judge Paul G. Cassell

Magistrate Judge Paul M. Warner

This matter was referred to Magistrate Judge Paul M. Warner by District Judge Paul G. Cassell pursuant to 28 U.S.C. § 636(b)(1)(A).

In an order dated May 11, 2007, the court granted Defendants Frederick W. Newcomb and Newcomb & Company's (collectively, the "Newcomb Defendants") counsel's motion to withdraw as counsel.¹ In that order, the court ordered Mr. Newcomb to file a notice with the court naming retained counsel to represent him in his individual capacity or, alternatively, his decision to appear pro se. *See* DUCivR 83-1.4(b). The court further ordered Mr. Newcomb (as a representative for Newcomb & Company, which is an S corporation) to file a notice with the court naming Newcomb & Company's new counsel. *See id.*; *see also Harrison v. Wahatoyas, L.L.C.*, 253 F.3d 552, 556 (10th Cir. 2001) ("As a general matter, a corporation or other business

¹ *See* docket no. 84.

entity can only appear in court through an attorney and not through a non-attorney corporate officer appearing pro se.”).

On May 30, 2007, Mr. Newcomb filed the court-ordered notice for himself and for Newcomb & Company. In that notice, Mr. Newcomb indicated that he would be appearing pro se in his individual capacity.² In that same notice, Mr. Newcomb did not name Newcomb & Company’s new counsel. Instead, Mr. Newcomb asked that the court allow him to represent Newcomb & Company pro se until the company is able to retain counsel. The court has interpreted this request as a motion for Mr. Newcomb to appear pro se on behalf of Newcomb & Company.³

At the hearing on the Newcomb Defendants’ counsel’s motion to withdraw, the court made it clear that under Tenth Circuit law, a corporation is not allowed to appear in court by way of a corporate officer or other representative appearing pro se. *See, e.g., Wahatoyas*, 253 F.3d at 556. In the court’s order granting the motion to withdraw, the court cited *Wahatoyas* as the authority for that proposition.

In his motion, Mr. Newcomb attempts to distinguish Newcomb & Company from the entity involved in *Wahatoyas*. Mr. Newcomb has misunderstood the court’s reliance upon that case. While the court cited *Wahatoyas* for the principle that a corporation cannot appear in court pro se, *Wahatoyas* is but one case among many in the Tenth Circuit standing for that same

² *See* docket no. 90.

³ *See* docket no. 91.

principle. *See, e.g., DeVilliers v. Atlas Corp.*, 360 F.2d 292, 294 (10th Cir. 1966) (“[A] corporation can appear in a court of record only by an attorney at law.”); *Flora Constr. Co. v. Fireman’s Fund Ins. Co.*, 307 F.2d 413, 414 (10th Cir. 1962) (“The rule is well established that a corporation can appear in a court of record only by an attorney at law.”). Further, the same principle has been recognized by the United States Supreme Court. *See, e.g., Rowland v. California Men’s Colony*, 506 U.S. 194, 201-02 (1993) (“It has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel.”); *Commercial & R.R. Bank of Vicksburg v. Slocumb, Richards & Co.*, 39 U.S. 60, 65 (1840) (“[A] corporation cannot appear but by attorney”); *Osborn v. Bank of the United States*, 22 U.S. 738, 830 (1824) (“A corporation, it is true, can appear only by attorney, while a natural person may appear for himself.”).

Based on the foregoing authorities, it is well established that Mr. Newcomb cannot appear pro se on behalf of the corporate entity Newcomb & Company. Therefore, Newcomb & Company’s motion for Mr. Newcomb to appear pro se on behalf of the company is **DENIED**.

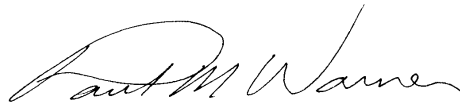
Mr. Newcomb has failed to notify the court of Newcomb & Company’s new counsel within twenty (20) days, as required by the court’s May 11, 2007 order and civil rule 83-1.4(b) of the Rules of Practice for the United States District Court for the District of Utah. *See* DUCivR 83-1.4(b). As a result, Mr. Newcomb and Newcomb & Company are hereby notified that Newcomb & Company is currently unrepresented by counsel in this case. Newcomb & Company’s status as an unrepresented party will continue until Newcomb & Company retains counsel and said counsel files a formal notice of appearance in this case. Further, given the well-

established rule that Mr. Newcomb cannot appear pro se on behalf of Newcomb & Company, the court will neither allow nor recognize any actions taken by Mr. Newcomb on behalf of Newcomb & Company in this case.

IT IS SO ORDERED.

DATED this 1st day of June, 2007.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner", written in black ink.

PAUL M. WARNER
United States Magistrate Judge